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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,503	02/06/2004	Michael E. McClurken	TLK019CON	6627
33047 7590 09/22/2009 GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERCIAL STREET MANCHESTER, NH 03101				
EXAMINER				
PEFFLEY, MICHAEL F				
ART UNIT		PAPER NUMBER		
3739				
MAIL DATE		DELIVERY MODE		
09/22/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,503

Applicant(s)

MCCLURKEN, MICHAEL E.

Examiner

Michael Peffley

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37, 39-62 and 66-68 is/are pending in the application.
- 4a) Of the above claim(s) 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37, 39-51, 53-62 and 66-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 Feb 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 30, 2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37, 39-51, 53-62 and 66-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mulier et al (6,096,037) in view of the teachings of Huitema et al (5,562,702) and Eggers et al ('674).

Mulier et al disclose a device for clamping and treating electrodes, and specifically teach that providing an electrolytic solution from fluid outlets in the jaws will enhance the delivery of energy to tissue. Figures 4 and 5 show the electrode in the jaw member, the electrode having a plurality of fluid outlets for delivering fluid to tissue.

Mulier et al fail to specifically disclose a dimensional change sensor for measuring tissue thickness.

Huitema et al disclose another forceps device, and specifically teach that it is known to include sensors in forceps jaws for measuring tissue thickness (col. 9, lines 48-51). The Huitema et al forceps device may also include energy delivery means for treating tissue. Huitema et al fail to specifically disclose the type and placement of the thickness measuring sensor.

Eggers et al also disclose a dimensional change sensor (310) which is an ultrasound sensor that detects a change in the thickness of tissue as it is being ablated. The sensor is used to control the output of RF energy and alerts the user of changing tissue thickness to prevent creating too deep a channel in tissue (col. 23, lines 50-63). The examiner maintains the device is inherently a "shrinkage sensor" since the channel created by the device is creating a shrinking tissue area (i.e. channel) that is being detected by the sensor, and the sensor provides feedback regarding the shrinking of the tissue (i.e. the depth of the channel).

To have provided the Mulier et al forceps device with a sensor for measuring tissue thickness would have been an obvious consideration for one of ordinary skill in the art, particularly since Huitema et al teach that it is known to provide such sensors on forceps devices. To have further provided a surface mounted sensor would have been an obvious design consideration since Eggers et al fairly teach it is known to use such a surface mounted sensor to monitor tissue thickness.

Response to Arguments

Applicant's arguments filed June 30, 2009 have been fully considered but they are not persuasive.

Applicant asserts on page 8 of the response that the Eggers ultrasonic transducer does not grasp tissue or move relative to tissue while having a grasp on tissue. The examiner maintains that it is not necessary for the Eggers reference to teach such a feature. Mulier and Huitema both disclose devices that grasp tissue, and Huitema specifically teaches that it is known to provide a tissue thickness sensor on a tissue grasping device. Eggers is merely used to teach a known type of tissue thickness sensor, and specifically one that may be used to feedback a signal to an energy generator to control the delivery of energy based on tissue thickness. The examiner maintains the Eggers sensor would inherently be capable of working on such a grasping device since it measures reflected signals to measure tissue thickness and since the opposing jaw would be easily distinguishable in such a reflected signal to readily define the tissue thickness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 7am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Peffley/
Primary Examiner, Art Unit 3739

/mp/
September 21, 2009